In the latter part of September, 1947, petitioner Said visited the Klassen Company's construction site and discussed unionization of the project with Harry Klassen, the Company's president, who expressed a desire to have the job organized (R. 30; 126). Several days later, when Said again visited the Klassan Company site, a Wadsworth truck was delivering material for the two Wadsworth prefabricated houses then being erected (R. 30; 126, 229). Said objected to Klassen's use of Wadsworth houses, saying that he did not see how Klassen could operate on a union basis and at the same time expect to erect houses fabricated by the struck Wadsworth plant. Said advised Klassen to discuss the matter with a representative of the Building Trades Council, since other unions would also have an interest in the job (R. 30-31; 126-127, 152, 223).

During the conversation, Klassen asked Said to furnish additional union carpenters to work with Monroe, a member of the Carpenters whom Klassen had hired with a view to making him carpentry foreman. He also told Said that he had hired another carpenter, Prather, who held a withdrawal card in Carpenters. Said told Klassen that he could not supply any carpenters because of the labor shortage in the area and suggested that Klassen hire men wherever he could. Said informed Klassen that he would ascertain Prather's status as a union member and report back (*ibid.*).

On October 8, after several intervening conver-

sations between Said and representatives of the Klassen Company, a subcommittee composed of business agents of construction craft unions affiliated with Building Trades Council, met with Klassen and the Klassen Company's vice president, Hodgson, at the Company's building site (R. 32; 127-128, 183, 239). During the ensuing discussion, Klassen and Hodgson reiterated their desire to operate on a union basis (R. 33; 128, 185, 243). Said brought up the Wadsworth dispute and the union committee suggested that the Klassen Company either construct "conventional" homes or use houses fabricated by another company to avoid dealing with Wadsworth (R. 32-33; 128-129, 183-184, 238-239). Klassen objected to doing either, saying that the shortage of skilled craftsmen made construction by the conventional method impossible and that the other prefabricated houses available did not compare in either quality or price with the Wadsworth product (*ibid.*). The Committee then suggested that Klassen either directly, or through his brother, ask the bank which was financing his company's purchase of the Wadsworth houses, to intercede with Wadsworth to settle its dispute (R. 33; 129-130, 184, 239). Klassen, however, refused to become involved in the Wadsworth dispute (*ibid.*). The discussion also covered other matters, among them, the fact that Klassen and Hodgson themselves worked with tools; that their painter was not a union contractor; that the concrete con-

tractor's employees were not union members; and that Prather was not in good standing with the Carpenters (R. 33; 150, 164, 241). The meeting closed with Said stating that Klassen and Hodgson probably would not be permitted to operate as a union job because of their determination to use Wadsworth houses, but that the Committee would consider the matter (R. 33; 243).

As Said and the Committee members left the site, Said instructed Monroe, the union carpenter employed by the Klassen Company, to telephone him that night (R. 91, 34; 176-177, 246). When Monroe did so, Said asked him if he "knew what the situation was" at the Klassen Company project (*ibid.*). Monroe replied that he did and that he was "quitting the job that night" (*ibid.*). The next morning, October 9, Monroe informed Klassen that he was leaving the job because the Klassen Company was "in an awful mess" and he "thought it best" that he work for Klassen's brother "for awhile" (R. 92, 34; 130-131, 177).

On the following day, October 10, the union subcommittee, through Said, reported to its parent committee on the meeting with Klassen and Hodgson, and the committee recommended that Building Trades Council place the Klassen Company on the "unfair" list and picket its job site (R. 35-36; 245-247, 265-266, 280). On October 13, Building Trades Council adopted this recommendation and authorized picketing of the Klassen Company and

the placing of its name on Council's "We Do Not Patronize" list (R. 35-36; 245-247, 265-266, 277). Copies of the minutes recording this action were sent to the unions affiliated with Building Trades Council (R. 37; 205, 272).[3] In addition, the Kansas City Central Labor Union, which represents the various American Federation of Labor unions in the area, was advised of the action and was requested to support it (R. 36; 277-278).

On October 14, a picket was posted in front of the Klassen Company site bearing a sign reading: "Non-union Building Tradesmen Are Employed on This Job" (R. 37; 131). The cost of the picket was shared by Carpenters (R. 37-38; 248). The picketing was wholly peaceful (R. 78, 37-38; 145). Nevertheless, employees of suppliers of the Klassen Company refused to cross the picket line to make deliveries of materials (R. 72, 38-39; 132-133, 156-157, 170-171, 172-173, 187, 199-200).

On October 16, Hodgson notified Said that his company "still wished to be a union organization," that it was "willing to do anything to be relieved of this picket" and asked Said what could be done to achieve this result (R. 39; 186-187). Said replied that he would discuss the matter with the committee and inform Hodgson. A few days later Said re-

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[3] The "We Do Not Patronize" list is not a written list (R. 37; 249, 272). Copies of the minutes of Building Trades Council's meetings at which action is taken with respect to the list are sent to affiliated unions and sometimes they are read at membership meetings (R. 37; 272).

ported to Hodgson that the committee had decided that the Klassen Company "would not be permitted to go union as long as [it was] dealing with Wadsworth" (*ibid.*). Said reiterated this position on October 22, when Klassen again offered to unionize his job (R. 39; 132, 252-253).

B. *The Board's conclusions.*—The Board found that Wadsworth was engaged in commerce within the meaning of the Act and that petitioners' conduct herein affected commerce within the meaning of the Act (R. 73-75, 24). The Board found that, by picketing the premises of the Klassen Company, by promulgating and circulating the "unfair" listing of the Klassen Company,[4] and by the telephone conversation with Monroe in the setting of their other conduct, petitioners induced and encouraged the employees of the Klassen Company, and of its suppliers, to engage in a strike or concerted refusal in the course of their employment to perform services for their employers (R. 90-91, 93). The Board further found that the "primary" object of petitioners' conduct was to force or require the Klassen Company to cease using the products of and to cease doing business with Wadsworth, another person (R. 75, 48). The Board, reversing the

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[4] In *Denver Building and Construction Trades Council, et al.* and *The Grauman Co.*, 87 NLRB, No. 136, the Board distinguished between the "unfair" listing of the secondary employer, as here, and the "unfair" listing of the primary employer, holding that the latter does not violate Section 8(b)(4)(A) because it is primary action.

Trial Examiner, held that the peaceful picketing and the "unfair" listing herein were not exempted from the reach of Section 8(b)(4)(A) by Section 8(c) whether or not petitioners used threats of reprisal or force or promise of benefit to induce the employees to cease work.[5] The Board concluded that Section 8(b)(4)(A) prohibits peaceful picketing, as well as other means of inducement and encouragement in furtherance of an objective proscribed therein and that Section 8(c) does not immunize such conduct. Accordingly, the Board held that petitioners' conduct violated Section 8(b)(4)(A) of the Act (R. 90, 91, 93).

C. *The Board's order.*—The Board ordered petitioners to cease and desist from inducing or encouraging the employees of the Klassen Company, or of any other employer, by picketing, by promulgating and circulating "We do not patronize" lists, by calling any employee off his job, or by related conduct, to engage in a strike or concerted refusal in the course of their employment to perform any services, where an object thereof is to force or require the Klassen Company, or any other employer or person, to cease using Wadsworth houses

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[5] The Trial Examiner sustained the picketing allegation of the complaint inasmuch as it was shown that as to at least two employees the picket line contained an implicit threat of discipline from their union should they cross it (R. 49). He recommended dismissal of the "unfair" listing allegation because of the absence of similar evidence regarding it (R. 50-51).

or to cease doing business with Wadsworth (R. 94). The order also requires petitioners to withdraw their support and sponsorship of the picketing and "unfair" listing of the Klassen Company by the Building Trades Council, and to post the customary notices of compliance and to send copies of them to the unions which had assisted in the boycott and to Monroe (R. 95-96).

D. *The proceedings in the Court of Appeals*—On August 10, 1949, the Board filed in the court below a petition for enforcement of its order (R. 1-3). On August 14, 1950, the court below handed down its opinion (R. 302-309) and, on September 9, 1950, entered its decree (R. 310) enforcing the Board's order in full.

ARGUMENT

1. Petitioners contend (Pet., pp. 42-44) that the Board was without jurisdiction over the unfair labor practices here found because the Klassen Company was not itself engaged in interstate commerce. But the unfair labor practice consisted of a secondary boycott against Wadsworth, who, as the Board found, and as the evidence shows, is engaged in interstate commerce.[6] Petitioners' argument that the restraint upon commerce resulting from its boycott of Wadsworth must be measured solely by the impact of the boycott upon the secon-

[6] Petitioners do not challenge the Board's finding (R. 73) that Wadsworth is "engaged in commerce as defined by the Act" (Section 2 (6) and (7)).

dary employer and not upon its target, Wadsworth[7] (Pet. 43-49), was rejected by the Board (R. 73-74), for the same reason that it rejected the similar argument in *Local 74, United Brotherhood of Carpenters, et al. and Ira A. Watson Co.*, 80 NLRB 533, enforced *sub nom. National Labor Relations Board* v. *Local 74, United Brotherhood of Carpenters, et al.*, 181 F. 2d 126 (C.A. 6), and *International Brotherhood of Electrical Workers, Local 501, et al. and Samuel Langer*, 82 NLRB 1028, enforced *sub nom. International Brotherhood of Electrical Workers, Local 501* v. *National Labor Relations Board*, 181 F. 2d 34 (C.A. 2), pending on petitions for certiorari, Nos. 85 and 108, this Term. Here, as in the cases cited, an extension of petitioners' boycott of Wadsworth to other users of Wadsworth products, would result in substantial curtailment of Wadsworth's interstate business. See Brief for the National Labor Relations Board in Opposition, No. 85, this Term, pp. 10-14. As this Court has recently declared, "If it is interstate commerce that feels the pinch, it does not matter how local the operation which applies the squeeze". *United States* v. *Women's Sportwear Association*, 336 U.S. 460, 464.

Since the Board continues to exercise jurisdic-

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[7] Petitioners' assertion (Pet. 43-44) that the effect on Wadsworth's business resulting from the secondary boycott must be ignored because if that effect had been achieved by a lawful primary strike and picketing it would not violate the Act, fails to distinguish between secondary boycotts which Congress illegalized and primary strikes which it did not.

tion over companies similar to Wadsworth, which produce, *inter alia,* goods destined for out-of-state shipment valued at over $25,000 annually, this case is not affected by the Board's recently enunciated policy of refraining from exercising jurisdiction over certain types of enterprise. See National Labor Relations Board Release, October 6, 1950; *Stanislaus Implement & Hardware Co., Ltd.,* 91 NLRB, No. 116, October 3, 1950.

2. Petitioners argue that the peaceful picketing, unfair listing and oral inducement of Monroe to quit, which were all designed to "induce or encourage" employees to engage in a secondary boycott, may not be regarded as unlawful because of Section 8 (c) of the Act, which provides that:

> The expressing of any views, argument or opinion, or the dissemination thereof, whether in printed, graphic, or visual form, shall not constitute or be evidence of an unfair labor practice under any of the provisions of this Act, if such expression contains no threat of reprisal or force or promise of benefit.

The same contention, which has been rejected by the Courts of Appeals for the Second and Ninth Circuits as well as by the court below,[8] is before

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[8] *National Labor Relations Board* v. *International Brotherhood of Electrical Workers,* 181 F. 2d 34 (C.A. 2), petition for certiorari pending No. 108; *Printing Specialties & Paper Converters Union, Local 388* v. *LeBaron,* 171 F. 2d 331, 334 (C.A. 9); *United Brotherhood of Carpenters and Joiners of America* v. *Sperry,* 170 F. 2d 863, 868-869 (C.A. 10).

this Court in *International Brotherhood of Electrical Workers* v. *National Labor Relations Board*, No. 108, and is discussed in our brief in opposition in that case, pp. 15-19. There are no contrary decisions.

This Court has pointed out that picketing is "more than free speech" (*Hughes* v. *Superior Court*, 339 U.S. 460, 464; *Bakery & Pastry Drivers and Helpers Local* v. *Wohl*, 315 U.S. 769, 775, 776 (concurring opinion)), and that it has "compulsive features * * * beyond the aspect of mere communication as an appeal to reason" (339 U.S. at 468). For the same reasons it is more than "the expressing of any views, argument or opinion" protected by Section 8 (c). It is on this ground, based on this Court's recent decisions, that the Board now holds Section 8 (c) inapplicable to picketing. See note 10, p. 16, *infra*.

The Board's earlier difficulty with this problem, reflected in the three opinions in the instant case (R. 78-90, 96-99, 99-110), which was decided before this Court's decisions in the *Giboney, Hughes, Hanke* and *Gazzam* cases,[9] rested on its reading of this Court's prior decisions as equating peaceful picketing to speech without more. As a consequence the Board felt itself impelled to con-

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[9] *Giboney* v. *Empire Storage & Ice Co.*, 336 U.S. 490, 502-504; *Hughes* v. *Superior Court*, 339 U.S. 460; *International Brotherhood of Teamsters* v. *Hanke*, 339 U.S. 470; *Building Service Employees International Union* v. *Gazzam*, 339 U.S. 532.

strue Section 8 (c) as extending to picketing and therefore inconsistent with Section 8 (b) (4) (A), and to resolve the conflict between the two sections in favor of the latter upon the basis of the overall purpose of the Congress. But the Board has recently concluded in the light of this Court's subsequent decisions that its reasoning in the instant case "was not correct"[10] and has restated its posi-

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[10] In *Denver Building and Construction Trades Council and Henry Shore*, 90 N.L.R.B., No. 224, decided August 7, 1950, the Board states:

> We are constrained to reverse the Trial Examiner's conclusion because we are now satisfied that our position in the *Wadsworth* case, stated as broadly as we stated it there, was not correct, with respect to the status of picketing under Section 8 (c) of the amended Act. In that case, decided February 18, 1949, both the majority and the dissenting members of the Board assumed that peaceful picketing was necessarily an expression of "views, argument, or opinion" within the meaning of Section 8 (c). That assumption was based upon the Supreme Court's earlier decisions in *Thornhill* v. *Alabama* and related cases, in which peaceful picketing in a labor dispute was apparently assimilated to "free speech" for the purposes of the First and Fourteenth Amendments to the Constitution. More recently, however, in *Giboney* v. *Empire Storage & Ice Company*, decided April 4, 1949, and in three cases decided on May 8, 1950, the Supreme Court made it clear that the *Thornhill* doctrine is not so broad as we and others had supposed. In one of these recent decisions the Court held that a State may restrict picketing engaged in for the purpose of compelling an employer to agree to discriminate against nonmembers of the picketing union, contrary to the State's public policy. And the Court pointed out that picketing—even peaceful picketing—has aspects which are more than speech, and that it may therefore be restricted, at least where it is undertaken for an unlawful objective.
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> Of course, we are here determining the scope of *statutory* provisions, not of the constitutional guaranty of free speech. But in interpreting Section 8 (c), the "free speech" guaranty of the amended Act, it is our duty to

tion as summarized in the preceding paragraph. Even if review were otherwise warranted, a case in which the findings are based upon a theory which the Board no longer follows would hardly seem to be the most appropriate vehicle.

In view of this Court's recent decisions, which sustained state prohibitions against picketing of the party with whom the union had a dispute, it is clear that Congress possesses the same constitutional authority with respect to picketing designed to aid a secondary boycott. Indeed, the *Giboney* case involves such a boycott, made unlawful by state law. Petitioners' contention that the "unfair listing" is protected by the First Amendment is the identical argument rejected by this Court as long ago as *Eastern States Retail Lumber Dealers' Association* v. *United States*, 234 U.S. 600, 608-609, 612-613, an antitrust case involving a so-called "black list."

3. This case does not present the question, which is presented in *Denver Building and Construction*

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follow the Supreme Court's present views on the status of picketing under the First Amendment. For there is nothing in the Act or in its legislative history to indicate that Congress intended to go beyond the protective scope of the Constitution in exempting the picketing activities of labor organizations from the various prohibitions contained in Section 8 (b). It follows that the Respondents' picketing in this case and their threats to picket were unfair labor practices, for Congress outlawed the Respondents' *objective* by Section 8 (a) (3) of the Act, and interdicted, in Section 8 (b) (2), all means other than mere persuasion, or "views, argument, or opinion" which a union might employ to achieve that unlawful objective.

Trades Council, et al. v. *National Labor Relations Board* (C.A.D.C.), not yet officially reported, pending on petition for certiorari, No. 393, this Term, and in *National Labor Relations Board* v. *Local 74, United Brotherhood of Carpenters,* and *National Labor Relations Board* v. *International Brotherhood of Electrical Workers, Local 501, supra,* p. 13, also pending on petitions for certiorari, Nos. 85 and 108, this Term, namely, whether it is an unfair labor practice within the meaning of Section 8 (b) (4) (A) for a labor organization to engage in a strike against a general contractor in order to force him to terminate the services of a subcontractor on the same job. Whether two or more employers engaged in a common project at a common site may be said to be "doing business" within the meaning of Section 8 (b) (4) (A), a question decided adversely to the Board in the *Denver* case, is not presented here, for, clearly, Wadsworth and Klassen were not engaged on a common project and were not operating at the same place. Wadsworth sold its products to Klassen, the general contractor. The decision of the court below, therefore, is not in conflict with the *Denver* case.

The evidence does not support petitioners' contention that Wadsworth and Klassen were so closely related as to require treating a strike against the latter as a primary strike against the former. As the court below observed (R. 308), "Wadsworth

and Klassen were completely separate corporations in ownership and management. There was no common ownership of stock, in no instance was a person an officer of both, and so far as the record indicates the only dealings between them related to the sale and purchase of approximately fifteen prefabricated houses to which reference has been made. Klassen was a neutral and unconcerned employer respecting the labor dispute existing between Wadsworth and its employees, within the meaning of the statute."

The technical advice which Wadsworth supplied to the Klassen Company on the assembly of its homes,[11] the Klassen Company's interest in securing the best buy for its money, the fact that Wadsworth or other prefabricators may sometimes erect their own houses, or the circumstances that Wadsworth and the Klassen Company used the same bank and attorney, did not destroy the separateness of the two employers, nor did it convert the Klassen Company construction project into a joint venture, or make the Klassen Company a participant in the dispute between Wadsworth and Carpenters.[12] No decision of the Board or of any court suggests that the phrase "doing business" is inapplicable to a relationship such as that between

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[11] At this time the Klassen Company was assembling either the first or second Wadsworth house (R. 159).

[12] The record affords no support whatever for petitioners' assertion (Pet. 53), that the Klassen Company was engaged in a strike-breaking operation on behalf of Wadsworth.

Wadsworth and the Klassen Company. See Briefs for the National Labor Relations Board in Opposition, No. 85, this Term, pp. 12-13, and No. 108, this Term, pp. 13-14.[13]

4. Petitioners contend (Pet. 36-41) that because Monroe was induced to leave the Klassen Company's employ five days before picketing of the Company's premises commenced, and because the only two employees who were called to testify that they were turned away by the picket line worked for different employers, substantial evidence is lacking to support the Board's finding, sustained by the court below, that petitioners induced or encouraged "employees of any employer to engage in a strike or a concerted refusal in the course of their employment" to perform services. But this contention challenges only the sufficiency of evidence to support a Board finding, and, as such, does not warrant review by this Court. Contrary to petitioners' assertion (Pet. 36), the Board and the court found (R. 72, 90, 91, 93, 304-305) that the

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[13] *National Union of Marine Cooks and Stewards, et al. and Irwin-Lyons Lumber Co.*, 87 NLRB, No. 9, and *International Brotherhood of Teamsters, etc. Local 294, and Conway's Express*, 87 NLRB, No. 130, cited by petitioners (Pet. 53), are clearly distinguishable. In the first case the Board held that two companies owned by the same individuals and engaged in an integrated enterprise are not separate employers within the meaning of Section 8 (b) (4) (A). The second case holds only that a strike against the owner of a leased truck to force him to adhere to a valid contract and place a union driver on the truck is not secondary when the owner retains joint control with the lessee over the driver.

picketing of the Klassen Company induced and end encouraged not only the two drivers mentioned bed by petitioners, but all the employees of the Klassenassen Company and of any other employer who ap- approached the picketed premises to engage in a con- concerted refusal to cross the picket line to handlandle goods or perform services for the Klassen Com-Company.[14] Likewise, the "We Do Not Patronize" list' list induced and encouraged all the employees of any any employer to whose attention it was directed tod to engage in a concerted refusal to handle goods ors or

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[14] As the record shows, various employees other than CoolCook and Cantrill mentioned by petitioners (Pet. 36), were, ire, in fact, turned away by the picket line (R. 38; 132-133, 156-157-157, 187). In any event, it is unnecessary to establish that tht the inducement or encouragement of employees not to performform their duties was successful. It is also immaterial tha that Cook's employer had instructed him not to make th the delivery to the Klassen Company if it were being picketeceted (see Pet. 38). Except for the picket line, Cook woulcould have performed his assigned task (R. 49; 173). Nor dr do the decisions in *Humphrey* v. *Local 294, Internationaonal Brotherhood of Teamsters, etc.*, 25 LRRM 2318 (N.DN.D. N. Y.), and *International Brotherhood of Teamsters, etc etc., Local 294 and Conway's Express*, 87 NLRB, No. 130, citecited by petitioners (Pet. 39-40), suggest that the Cook incidendent was not a violation because of the employer's instructionsons. In the *Humphrey* case, the court found there was illegaegal inducement and encouragement of the work stoppage butbut, because of the employer's acquiescence therein, in its discrecretion, withheld injunctive relief under Section 10 (l) of th the Act. In the *Conway* case, the employers in question hahad previously contracted with the respondent union not t to require the latter's members to handle struck work. No corontention is made by petitioners that their conduct in this casase was protected by prior contractual arrangements.

perform services for the Klassen Company.[15] As the Board found (R. 93), petitioners' inducement of Monroe to quit the Klassen Company, though prior in point of time to its other acts of inducement and encouragement, was part of petitioners' campaign to force the Klassen Company to cease doing business with Wadsworth.

Since the Board did not find that petitioners' inducement to cease work was limited to a single employee of Klassen and a single employee of each of the other employers, this case does not present the question, urged by petitioners (Pet. 3, 37), whether the phrase "employees of any employer", as used in Section 8 (b) (4), is applicable where illegal inducement is directed to only one employee of each of several employers.[16]

5. Petitioners also attack (Pet. 39), as unsupported by substantial evidence, the Board's finding (R. 91-93), sustained by the court below (R. 306), that petitioners illegally induced Monroe to with-

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[15] As explained by Said, whenever an employer is placed on the "We Do Not Patronize" list, union members are expected "not to do business" with the listed concern "or to transgress on their property in any way" or "to have anything to do with them" (R. 37; 272).

[16] The words "employees of any employer" as used in Section 8 (b) (4) include single employees of several employers as well as several employees of a single employer. "In determining the meaning of any Act of Congress, unless the context indicates otherwise—words importing the singular include and apply to several persons, parties, or things; words importing the plural include the singular" (61 Stat. 633, as amended, 62 Stat. 859, 1 U. S. C., Supp. III, Sec. 1). Cf. *State* v. *Hilbish*, 59 Nev. 469; *State* v. *Long-Bell Lumber Co.*, 321 Mo. 461.

draw from the Klassen Company's employ to force the latter to discontinue using Wadsworth houses. The Board found and the record shows, however (R. 92; 176, 179), that Monroe, being aware of the dispute between Carpenters and Wadsworth and of the working conditions at the Klassen Company, nevertheless continued to work for the Klassen Company and disclosed no intent to leave its employ until after Said instructed him to telephone on October 8. Under these circumstances, there is clear support for the Board's conclusion that the telephone conversation was intended to provoke Monroe's quitting, as it did, and that this was part of the total course of conduct engaged in by petitioners to bring pressure on the Klassen Company to discontinue using Wadsworth houses.

6. Petitioners' contention (Pet. 53-54) that the Board's order, upon the unfair labor practice found, is too broad and thus improper, presents no substantial question warranting review. The order (R. 94-96), does no more than enjoin petitioners from exerting the same kind of economic pressure against Wadsworth through other employers as they exerted against Wadsworth through the Klassen Company. The order thus plainly falls within the scope of the Board's authority, recognized by this Court, to prohibit other violations which resemble "that which [the offending party] has committed. . . ." *National Labor Relations Board* v. *Express Publishing Co.*, 312 U. S. 426,

437; *May Department Stores Co.* v. *National La Relations Board*, 326 U. S. 376, 392.

7. Petitioners' contention (Pet. 54-55) that h tlement of the primary dispute with Wadswo's and dissolution of the Klassen Company rendy the Board's order moot was properly rejected is the court below (R. 306-307). The order still effective as to petitioners' subsequent conduct, as it applies to all employers handling Wadsworth products, not merely to Klassen. Cf. *National Labor Relations Board* v. *Pennsylvania Greyhound Lines, Inc.*, 303 U. S. 261, 271; *National Labor Relations Board* v. *Mexia Textile Mills, Inc.*, 339 U. S. 563, 567 (voluntary discontinuance of unfair lab practice does not render case moot).

8. Petitioners claim (Pet. 55-56) that the Board in later decisions has abandoned the position which it took in the present case. With respect to the effect of Section 8(c) the Board has altered its reasoning, as explained on pages 15-17, *supra*, but still reaches the same result. The other Board cases on which petitioners rely are clearly distinguishable from the instant case.

CONCLUSION

The decision below is correct and presents no conflict of decisions. The petition for a writ of certiorari should be denied.

Respectfully submitted,

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DECEMBER, 1950.

APPENDIX

The relevant provisions of the Labor Management Relations Act of 1947 (61 Stat. 136, 29 U. S. C., Supp. III, 141, *et seq.*), not contained in petitioners' Appendix (pp. 59-61), are as follows:

* * * * *

"PREVENTION OF UNFAIR LABOR PRACTICES"

"Sec. 10. * * *

* * * * *

"(b) Whenever it is charged that any person has engaged in or is engaging in any such unfair labor practice, the Board, or any agent or agency designated by the Board for such purposes, shall have power to issue and cause to be served upon such person a complaint stating the charges in that respect, and containing a notice of hearing before the Board or a member thereof, or before a designated agent or agency, at a place therein fixed, not less than five days after the serving of said complaint: * * *

"(c) * * * If upon the preponderance of the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action including reinstatement of employees with or without

back pay, as will effectuate the policies of this Act: * * *

* * * * *

"(e) The Board shall have power to petition any circuit court of appeals of the United States * * * wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall certify and file in the court a transcript of the entire record in the proceedings, including the pleadings and testimony upon which such order was entered and the findings and order of the Board. Upon such filing, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board. No objection that has not been urged before the Board, its member, agent, or agency, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered

as a whole shall be conclusive. * * * The jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review * * * by the Supreme Court of the United States upon writ of certiorari or certification as provided in sections 239 and 240 of the Judicial Code, as amended (U. S. C., title 28, secs. 346 and 347)."

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